

AMENDED IN SENATE JUNE 20, 2005

AMENDED IN ASSEMBLY APRIL 20, 2005

AMENDED IN ASSEMBLY APRIL 12, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

## ASSEMBLY BILL

**No. 911**

**Introduced by Assembly Member Chu**

February 18, 2005

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An act to amend ~~Sections 5027 and 22255 of the Business and Professions~~ *Section 13943.1 of the Government Code*, and to amend Sections ~~407, 441, 451, and 452 of, and to add Sections 6595 and 7056.45 to, 19732, 19733, 19738, and 19777.5 of, to add Section 19255 to, and to repeal Section 19737 of the Revenue and Taxation Code~~, relating to taxation, *and declaring the urgency thereof, to take effect immediately.*

### LEGISLATIVE COUNSEL'S DIGEST

AB 911, as amended, Chu. ~~Sales and use tax administration: property tax statements: income taxes: postponement of credits and deductions.~~ *Taxation: tax amnesty programs: administration.*

*Existing law authorizes the State Board of Control to discharge any state agency or employee from accountability for the collection of taxes, licenses, fees, or money if the debt is uncollectible or the amount of the debt does not justify the cost of its collection. Existing law authorizes a state agency not to collect these moneys if the amount involved is \$250 or less and the amount owed is uncollectible or does not justify the cost of collection.*

*This bill would allow the Franchise Tax Board, in addition to its existing authority to place certain taxpayer debts into inactive status,*

*to extinguish an outstanding liability for the payment of any tax, license, fee, or other money deemed uncollectible that is due and owing to the state, if certain conditions are met, and to remove from its financial records the amounts for which the liability has been extinguished.*

*Under existing tax law, once a tax liability becomes due and payable, a statutory lien arises for that amount upon all real and personal property belonging to that taxpayer, but no statute of limitations exists on the collection of an income or franchise tax delinquency.*

*This bill, for tax liabilities that are due and payable, as defined, before, on, or after July 1, 2006, would establish a statute of limitations on collections of those liabilities to limit the collection period to 20 years beginning from the last statutory lien date for each taxable year, and would extinguish that liability for that taxable year by abating the underlying tax.*

*Existing law imposes specified taxes, including sales and use taxes that are administered by the State Board of Equalization, and personal income and corporate taxes collected and administered by the Franchise Tax Board and requires the State Board of Equalization and the Franchise Tax Board to administer tax amnesty programs during the period beginning February 1, 2005, and ending on March 31, 2005, inclusive, or during any other 2-month period ending before June 30, 2005, as provided. Existing tax laws allow a waiver of a taxpayer's unpaid penalties and fees if the taxpayer satisfies specific criteria, including a payment of all taxes due within a specified period, and provide for the imposition of a penalty and the revocation of that waiver if the taxpayer fails to pay any tax due for the 2005 and 2006 taxable years, as provided.*

*This bill would repeal the imposition of the penalty and the revocation of the waiver of penalties and fees, as provided. This bill would also make various technical changes to the tax amnesty provisions.*

*Under existing tax laws, certain taxpayers are subject to a 50% amnesty penalty, which is an amount equal to 50% of the accrued underpayment interest payable for a specified period, if they have a balance due either on or after March 31, 2005, as provided. Existing law generally provides that an overpayment made by a taxpayer for any taxable year may be credited against the taxpayer's deficiency for any other taxable year, as specified, but does not allow a taxpayer to*

*offset underpayments for taxable years eligible for amnesty with overpayments for other taxable years for purposes of reducing the amnesty penalty.*

*This bill, for purposes of computing amnesty penalties imposed on a taxpayer after March 31, 2005, would permit the taxpayer to offset an underpayment for taxable years eligible for amnesty with an overpayment for other taxable years, as specified.*

*This bill would declare that it is to take effect immediately as an urgency statute.*

~~Under existing law, the State Board of Accountancy is required, by regulation, to prescribe or amend, among other rules, basic requirements for continuing education for several categories of licensees.~~

~~This bill would additionally authorize the board to prescribe rules requiring a licensee who renews his or her license after January 1, 2006, to complete at least 4 hours of specified continuing education in the area of the Sales and Use Tax Law, as provided.~~

~~The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property. Existing law requires retailers, as specified, to register with, and to obtain a seller's permit from, the State Board of Equalization. The State Board of Equalization issues forms for the computation and payment of sales and use taxes collected or owed by those retailers. There is no requirement for persons, other than retailers, that owe use taxes to register with the State Board of Equalization. Consequently, those persons do not receive forms for the computation and payment of use taxes.~~

~~This bill would impose a penalty on a taxpayer who fails to timely pay or remit to the State Board of Equalization applicable qualified sales or use tax, as defined, in connection with the taxpayer's purchase or acquisition of tangible personal property. This bill would specify that the penalty would be equal to the amount of the sales or use tax applicable to the taxpayer's purchase or acquisition of that tangible personal property.~~

~~Existing property tax law requires each person owning taxable personal property with an aggregate cost of \$100,000 or more, to file a signed property statement with the county assessor. Existing law provides that the State Board of Equalization shall prescribe the information that is required to be included in the personal property~~

~~statement. Existing law provides that the information contained in the personal property statement shall not be open for public inspection.~~

~~This bill would require that a personal property statement include information regarding a person's responsibility for payment of sales or use taxes and would request information with respect to that person's acquisition of tangible personal property for which sales or use tax, as applicable, has not been paid. This bill would require the county assessor to forward this information to the board. This bill would also provide that, for purposes of complying with the assessee's liability for use tax, the property tax statement sent to the assessee should be accompanied by the form that is used for filing the use tax return, as specified.~~

~~Existing property tax law requires assessors, on the second Monday in July, to annually transmit a statistical statement to the board, as specified.~~

~~This bill would additionally require assessors to annually provide to the board, on or before August 15, an electronic copy of the roll, as specified.~~

~~This bill, by imposing new duties on a county assessor, would constitute a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

Vote: ~~majority~~<sup>2/3</sup>. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~yes~~<sup>no</sup>.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 13943.1 of the Government Code is  
2     amended to read:

3     13943.1. ~~A~~-(a) Except as provided in subdivision (b), a  
4     discharge granted pursuant to this chapter to a state agency or  
5     employee does not release any person from the payment of any  
6     tax, license, fee, or other money that is due and owing to the  
7     state.

1     (b) A discharge granted pursuant to this chapter to the  
2     Franchise Tax Board shall release a person from a liability for  
3     the payment of any tax, fee, or other liability deemed  
4     uncollectible that is due and owing to the state and extinguish  
5     that liability, if at least one of the following conditions is met:

6     (1) The debt is for an amount less than two hundred and fifty  
7     dollars (\$250).

8     (2) The liable person has been deceased for more than four  
9     years and there is no active probate with respect to that person.

10    (3) The Franchise Tax Board has determined that the liable  
11    person has a permanent financial hardship.

12    (4) The debt has been unpaid for more than 30 years.

13    (c) The Franchise Tax Board shall permanently remove from  
14    its financial records the amounts for which the liability has been  
15    extinguished pursuant to subdivision (b).

16    SEC. 2. Section 19255 is added to the Revenue and Taxation  
17    Code, to read:

18    19255. (a) Except as otherwise provided in subdivisions (b)  
19    and (e), after 20 years have lapsed from the date the latest tax  
20    liability for a taxable year or the date any other liability that is  
21    not associated with a taxable year becomes "due and payable"  
22    within the meaning of Section 19221, the Franchise Tax Board  
23    may not collect that amount and the taxpayer's liability to the  
24    state for that liability is abated by reason of lapse of time. Any  
25    actions taken by the Franchise Tax Board to collect an  
26    uncollectible liability shall be released, withdrawn, or otherwise  
27    terminated by the Franchise Tax Board, and no subsequent  
28    administrative or civil action shall be taken or brought to collect  
29    all or part of that uncollectible amount. Any amounts received in  
30    contravention of this section shall be considered an overpayment  
31    pursuant to Section 19306 that may be credited and refunded in  
32    accordance with Section 19301.

33    (b) If a timely civil action filed pursuant to Article 2 of  
34    Chapter 6 of this part is commenced, or a claim is filed in a  
35    probate action, the period for which the liability is collectable  
36    shall be extended and shall not expire until that liability, probate  
37    claim, or judgment against the taxpayer arising from that  
38    liability is satisfied or becomes unenforceable under the laws  
39    applicable to the enforcement of civil judgments.

40    (c) For purposes of this section, all of the following apply:

1     (1) “Tax liability” means a liability imposed under Part 10  
2     (commencing with Section 17001), Part 11 (commencing with  
3     Section 23001), or this part, and includes any additions to tax,  
4     interest, penalties, fees and any other amounts relating to the  
5     imposed liability.

6     (2) If more than one liability is “due and payable” for a  
7     particular taxable year, the “due and payable” date that is later  
8     in time shall be the date upon which the 20-year limitation of  
9     subdivision (a) commences.

10    (3) The Franchise Tax Board shall permanently remove from  
11    its financial records the amounts for which liability has been  
12    abated pursuant to subdivision (a).

13    (d) This section shall not apply to amounts subject to  
14    collection by the Franchise Tax Board pursuant to Article 5, 5.5,  
15    or 6 of this chapter, or any other amount that is not a tax  
16    imposed under Part 10 or Part 11, but which the Franchise Tax  
17    Board is collecting as though it were a final personal income tax  
18    delinquency.

19    (e) (1) The expiration of the period of limitation on collection  
20    under this section shall be suspended for the following periods:

21    (A) The period that the Franchise Tax Board is prohibited  
22    from involuntary collection under subparagraph (B) of  
23    paragraph (1) of subdivision (b) of Section 19271 relating to  
24    collection of child support delinquencies, plus 60 days thereafter.

25    (B) The period during which the Franchise Tax Board is  
26    prohibited by reason of a bankruptcy case from collecting, plus  
27    six months thereafter.

28    (C) The period described under subdivision (d) of Section  
29    19008 relating to installment payment agreements.

30    (D) The period during which collection is postponed by  
31    operation of law under Section 18571, related to postponement  
32    by reason of service in a combat zone, or under Section 18572,  
33    related to postponement by reason of presidentially declared  
34    disaster or terroristic or military action.

35    (E) During any other period during which collection of a tax  
36    is suspended, postponed, or extended by operation of law.

37    (2) A suspension of the period of limitation under this  
38    subdivision shall apply with respect to both parties of any  
39    liability that is joint and several.

(f) This section shall be applied on and after July 1, 2006, to any liability “due and payable” before, on, or after that date.

SEC. 3. Section 19732 of the Revenue and Taxation Code is amended to read:

19732. (a) For any taxpayer who meets each of the requirements of Section 19733, ~~subject to the conditions set forth in Section 19737~~ both of the following apply:

(1) The Franchise Tax Board shall waive all unpaid penalties and fees imposed by this part for each taxable year for which tax amnesty is allowed, but only to the extent of the amount of any penalty or fee that is owed as a result of previous nonreporting or underreporting of tax liabilities or prior nonpayment of any taxes previously assessed or proposed to be assessed for that taxable year.

(2) Except as provided in subdivision (b), no criminal action shall be brought against the taxpayer for the taxable years for which tax amnesty is allowed for the nonreporting or underreporting of tax liabilities or the nonpayment of any taxes previously assessed or proposed to be assessed.

(b) This chapter shall not apply to violations of this part, for which, as of February 1, 2005, any of the following applies:

(1) The taxpayer is on notice of a criminal investigation by a complaint having been filed against the taxpayer.

(2) The taxpayer is under criminal investigation.

(3) A court proceeding has already been initiated.

(c) This section shall not apply to any nonreported or underreported tax liability amounts attributable to tax shelter items that could have been reported under either the voluntary compliance initiative under Chapter 9.5 (commencing with Section 19751) or the Internal Revenue Service’s Offshore Voluntary Compliance Initiative described in Revenue Procedure 2003–11.

(d) No refund or credit shall be granted with respect to any penalty or fee paid with respect to a taxable year prior to the time the taxpayer makes a request for tax amnesty for that taxable year pursuant to Section 19733.

(e) Notwithstanding Chapter 6 (commencing with Section 19301), a taxpayer may not file a claim for refund or credit for any amounts paid in connection with the tax amnesty program under this chapter.

1     *SEC. 4. Section 19733 of the Revenue and Taxation Code is*  
2     *amended to read:*

3     19733. (a) This chapter shall apply to any taxpayer who;  
4     ~~during the tax amnesty program period specified in Section~~  
5     ~~19731, satisfies both of the following requirements:~~

6     (1) ~~Is~~ *During the tax amnesty program period specified in*  
7     *Section 19731, is eligible to participate in the tax amnesty*  
8     *program.*

9     (2) ~~Files~~ *During the tax amnesty program period specified in*  
10    *Section 19731, files a completed amnesty application with the*  
11    *Franchise Tax Board, signed under penalty of perjury, electing to*  
12    *participate in the tax amnesty program.*

13    (3) Within 60 days after the conclusion of the tax amnesty  
14    period, does the following:

15    (A) (i) For any taxable year eligible for the tax amnesty  
16    program where the taxpayer has not filed any required return,  
17    files a completed original tax return for that year, or

18    (ii) For any taxable year eligible for the tax amnesty program  
19    where the taxpayer filed a return but underreported tax liability  
20    on that return, files an amended return for that year.

21    (B) Pays in full any taxes and interest due for each taxable  
22    year described in clauses (i) and (ii) of subparagraph (A), as  
23    applicable, for which amnesty is requested, or applies for an  
24    installment payment agreement under subdivision (b). For  
25    taxpayers who have not paid in full any taxes previously  
26    proposed to be assessed, pays in full the taxes and interest due for  
27    that portion of the proposed assessment for each taxable year for  
28    which amnesty is requested or applies for an installment payment  
29    agreement under subdivision (b).

30    (4) For purposes of complying with the full payment  
31    provisions of paragraph (3) of subdivision (a), if the full amount  
32    due is paid within the period set forth in paragraph (3) of  
33    subdivision (c) of Section 19101 after the date the Franchise Tax  
34    Board mails a notice resulting from the filing of an amnesty  
35    application or the full amount is paid within 60 days after the  
36    conclusion of the tax amnesty period, the full amount due shall  
37    be treated as paid during the amnesty period.

38    (5) In the case of any taxpayer that has filed for bankruptcy  
39    protection under Title 11 of the United States Code, submits an



1 order from a Federal Bankruptcy Court allowing the taxpayer to  
2 participate in the amnesty program.

3 (b) (1) For purposes of complying with the full payment  
4 provisions of subparagraph (B) of paragraph (3) of subdivision  
5 (a), the Franchise Tax Board may enter into an installment  
6 payment agreement, but only if final payment under the terms of  
7 that installment payment agreement is due and is paid no later  
8 than June 30, 2006.

9 (2) Any installment payment agreement authorized by this  
10 subdivision shall include interest on the outstanding amount due  
11 at the rate prescribed in Section 19521.

12 (3) Failure by the taxpayer to fully comply with the terms of  
13 an installment payment agreement under this subdivision shall  
14 render the waiver of penalties and fees under Section 19732 null  
15 and void, unless the Franchise Tax Board determines that the  
16 failure was due to reasonable cause and not due to willful  
17 neglect.

18 (4) In the case of any failure described under paragraph (3),  
19 the total amount of tax, interest, fees, and all penalties shall  
20 become immediately due and payable.

21 (c) (1) The application required under paragraph (2) of  
22 subdivision (a) shall be in the form and manner specified by the  
23 Franchise Tax Board, but in no case shall a mere payment of any  
24 taxes and interest due, in whole or in part, for any taxable year  
25 otherwise eligible for amnesty under this part, be deemed to  
26 constitute an acceptable amnesty application under this part. For  
27 purposes of the prior sentence, the application of a refund from  
28 one taxable year to offset a tax liability from another taxable year  
29 otherwise eligible for amnesty shall not, without the filing of an  
30 amnesty application, be deemed to constitute an acceptable  
31 amnesty application under this part.

32 (2) The Legislature specifically intends that the Franchise Tax  
33 Board, in administering the amnesty application requirement  
34 under this part, make the amnesty application process as  
35 streamlined as possible to ensure participation in the amnesty  
36 program will be available to as many taxpayers as possible  
37 without otherwise compromising the Franchise Tax Board's  
38 ability to enforce and collect the taxes imposed under Part 10  
39 (commencing with Section 17001) and Part 11 (commencing  
40 with Section 23001).

(d) Upon the conclusion of the tax amnesty program period, the Franchise Tax Board may propose a deficiency upon any return filed pursuant to subparagraph (A) of paragraph (3) of subdivision (a), impose penalties and fees, or initiate criminal action under this part with respect to the difference between the amount shown on that return and the correct amount of tax. This action shall not invalidate any waivers previously granted under Section 19732.

(e) All revenues derived pursuant to subdivision (c) shall be subject to Sections 19602 and 19604.

*SEC. 5. Section 19737 of the Revenue and Taxation Code is repealed.*

~~19737. (a) In the case of any taxpayer who participates in the tax amnesty program under this chapter, receives a waiver of all penalties and fees, and subsequently fails to pay any amount of tax (including penalties, fees and other amounts) for the 2005 or 2006 taxable year, which failure results in the imposition of a collection cost recovery fee under Section 19254, then the previous waiver of the penalties and fees under the tax amnesty program shall be rendered null and void, and all penalties, fees, and associated interest shall be immediately due and payable.~~

~~(b) Article 3 (commencing with Section 19031), relating to deficiency assessments, shall not apply with respect to the assessment or collection of any penalty, fee, or interest imposed pursuant to subdivision (a).~~

~~(c) Notwithstanding Chapter 6 (commencing with Section 19301), a taxpayer may not file a claim for refund or credit for any amounts paid in connection with any penalty, fee, or interest imposed pursuant to subdivision (a).~~

*SEC. 6. Section 19738 of the Revenue and Taxation Code is amended to read:*

19738. Any taxpayer who has an existing installment payment agreement under Section 19008 as of the start of the amnesty program, and who does not participate in the amnesty program, may not be subject to the penalty imposed under Section 19777.5 with respect to amounts payable under that agreement.

*SEC. 7. Section 19777.5 of the Revenue and Taxation Code is amended to read:*

1 19777.5. (a) There shall be added to the tax for each taxable  
2 year for which amnesty could have been requested:

3 (1) For amounts that are due and payable on the last day of the  
4 amnesty period, an amount equal to 50 percent of the accrued  
5 interest payable under Section 19101 for the period beginning on  
6 the last date prescribed by law for the payment of that tax  
7 (determined without regard to extensions) and ending on the last  
8 day of the amnesty period specified in Section 19731.

9 (2) For amounts that become due and payable after the last  
10 date of the amnesty period, an amount equal to 50 percent of the  
11 interest computed under Section 19101 on any final amount,  
12 including final deficiencies and self-assessed amounts, for the  
13 period beginning on the last date prescribed by law for the  
14 payment of the tax for the year of the deficiency (determined  
15 without regard to extensions) and ending on the last day of the  
16 amnesty period specified in Section 19731.

17 (3) *For purposes of paragraph (2), Sections 19107, 19108,*  
18 *19110, and 19113 shall apply in determining the amount*  
19 *computed under Section 19101.*

20 (b) The penalty imposed by this section is in addition to any  
21 other penalty imposed under Part 10 (commencing with Section  
22 17001), Part 11 (commencing with Section 23001), or this part.

23 (c) This section does not apply to any amounts that are treated  
24 as paid during the amnesty program period under paragraph (4)  
25 of subdivision (a) of Section 19733 or paragraph (1) of  
26 subdivision (b) of Section 19733.

27 (d) Article 3 (commencing with Section 19031), (relating to  
28 deficiency assessments) shall not apply with respect to the  
29 assessment or collection of any penalty imposed by subdivision  
30 (a).

31 (e) Notwithstanding Chapter 6 (commencing with Section  
32 19301), a taxpayer may not file a claim for refund or credit for  
33 any amounts paid in connection with the penalty imposed in  
34 subdivision (a).

35 (f) *Notwithstanding Section 18415, the amendments made to*  
36 *this section by the act adding this subdivision shall apply to*  
37 *penalties imposed under paragraph (2) of subdivision (a) after*  
38 *March 31, 2005.*

39 SEC. 8. *This act is an urgency statute necessary for the*  
40 *immediate preservation of the public peace, health, or safety*

1 *within the meaning of Article IV of the Constitution and shall go*  
2 *into immediate effect. The facts constituting the necessity are:*

3 *In order to remove ambiguity from the provisions of the*  
4 *amnesty legislation and to provide relief to certain taxpayers that*  
5 *otherwise would be unreasonably penalized, it is necessary that*  
6 *this act take effect immediately.*

7 *SEC. 9. The amendments made by Sections 4 and 6 of this act*  
8 *shall be operative to the same extent as if they were included in*  
9 *the provisions of Chapter 226 of the Statutes of 2004.*

10 ~~SECTION 1. Section 5027 of the Business and Professions~~  
11 ~~Code is amended to read:~~

12  
13  
14 **All matter omitted in this version of the bill**  
15 **appears in the bill as amended in Assembly,**  
16 **April 20, 2005. (JR11)**  
17